

Commodity Credit Corporation, USDA

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the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0009 and 0560-0036.

[Amdt. 4, 50 FR 29641, July 22, 1985]

PART 1423—PROCESSED AGRICULTURAL COMMODITIES

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

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AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c).

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Ex- tracted Honey, and Bulk Oils

SOURCE: 44 FR 67081, Nov. 23, 1979, unless otherwise noted.

§ 1423.1 General statement and admin- istration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Dry or refrigerated processed agricultural commodities under a Processed Commodities Storage Agreement (hereinafter referred to as "processed commodities"),

(2) Bulk oils, under a Contract or Agreement for Tank Storage, which are owned by CCC or held by CCC as collateral for price support loans, and

(3) Extracted Honey (hereinafter referred to as "honey") under a Honey Storage Agreement, either in bulk or in containers meeting specifications in the applicable honey price support regulations, which is owned by CCC or held by CCC as security for price support loans. This subpart shall not apply to processed commodities, extracted honey, and bulk oils purchased in store by CCC for prompt shipment or to handling of commodities.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-560, "Application for Approval of Warehouse (Processed Commodities)", or Form CCC-513, "Application for Approval of Tank Farm", or Form CCC-55, "Application for Approval of Warehouse for Honey Storage Contract", whichever is applicable,

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and

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at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Copies of the warehouseman's tariff and any changes thereto, and

(4) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1423.2(a)(2) and such other documents or information as CCC may require.

[44 FR 67081, Nov. 23, 1979, as amended at 45 FR 84009, Dec. 22, 1980; Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.2 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business.

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations.

(3) Have a net worth which is the greater of \$25,000 or (i) for dairy and other processed commodities (other than those shown in paragraph (a)(3)(ii) of this section, the amount which results from multiplying five (5) percent of the current purchase price, times the quantity of the commodity to be stored; (ii) for honey, sugar and bulk

oils, the amount which results from multiplying the storage capacity of the flat warehouse space available to CCC or the maximum capacity of the bulk tank(s), whichever is applicable, times five (5) percent of the current loan value for honey and sugar and five (5) percent of the current market value for bulk oils. The net worth need not exceed \$250,000. If the calculated net worth exceeds \$25,000, the warehouseman may satisfy any deficiency in net worth between the \$25,000 minimum requirement and such calculated net worth by furnishing bonds (or acceptable substitute security) meeting the requirements of § 1423.3,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactory corrected, upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Use only warehouse receipts or such other documents as CCC may prescribe,

(7) Maintain accurate and complete inventory and operating records,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete loadout as stated below or as CCC may prescribe:

(i) Forty-five (45) working days of the total quantity of all honey and processed commodities stored for CCC.

(ii) Seventy-five (75) working days of that quantity of bulk oils for which the warehouse is or may be approved under a contract with CCC.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization technical qualifications, and skills in the warehousing business regarding the applicable commodity to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 days notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer, and

(3) Not be subject to greater than normal risk of fire, flood or other hazards.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.3 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than one hundred twenty (120) days or includes a rider providing for not less than one hundred twenty (120) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC. CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

(Pub. L. 80-89, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.4 Examination of warehouses.

Except as otherwise provided in this subpart a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

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§ 1423.5 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities, but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least \$25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended

or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.7 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart, and no reasonable and economical alternative is available for securing such services, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

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(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1423, Subpart—Standards for Approval for Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Oils) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0052, 0560-0044, 0560-0064, 0560-0065, 0560-0034, and 0560-0041.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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AUTHORITY: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7231-7237; and 15 U.S.C. 714b, 714c, and 714j.

SOURCE: 63 FR 17312, Apr. 9, 1998, unless otherwise noted.

§ 1425.1 Applicability.

This part sets forth the terms and conditions an approved Cooperative

Marketing Association (CMA) must meet to obtain commodity marketing assistance loans (loans) and loan deficiency payments (LDP's) from CCC on behalf of its members. A CMA meeting these terms and conditions may obtain loans and LDP's for any eligible commodity for which a loan and LDP program is in effect.

§ 1425.2 Administration.

On behalf of CCC, the Farm Service Agency will administer the provisions of this part under the general direction and supervision of the Deputy Administrator for Farm Programs. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions in this section.

Active member is a member who has utilized the services offered by a CMA in one of the three preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association (CMA) is a cooperative approved by CCC to participate in loan and LDP programs for any authorized commodity.

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain loans or LDP's. Commodities for which a CMA may be approved by CCC are barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, sorghum, soybeans, sunflower seed, and wheat.

Cooperative is a business owned and controlled by the producers who use its services and operated under generally accepted cooperative principles.

Eligible commodity is a commodity which meets the commodity's eligibility requirements set forth in chapter XIV of this title, and is produced and delivered to the CMA from a producer eligible for loan or LDP.